LIBRARY
SUPREME COURT, U. S.
SEP 22 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 437

LEONARD D. GODUTO AND NATHAN FRIEDMAN,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of Illinois

ROBERT KARMEL
33 North LaSalle Street
Chicago 2, Illinois

S. G. LIPPMAN
DeSales Building
Washington 6, D. C.

TIM L. BORNSTEIN
1741 DeSales Street, N.W.
Washington 6, D. C.

Attorneys for Petitioners.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
Opinion Below	1
Statement of Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement of the Case	4
Reasons for Allowance of Writ	8
(1) The State Court's Assertion of Jurisdiction Over Union Activities Subject to Regulation By the Labor Management Relations Act Is in Direct Conflict With Decisions of This Court	8
(2) The Decision of the Illinois Supreme Court Establishes a Major Exception to the Preemption Doctrine Which Seriously Threatens the Establishment of a Uniform Labor Policy	12
(3) The Instant Case Raises Important Questions Concerning Construction and Interpretation of the Trespass Aspect of the Fairlawn Decision	13
(4) The Decision of the Illinois Supreme Court Is in Direct Conflict With a Decision of the Supreme Court of the State of Washington	14
(5) The Decision of the State Court, Will Remove a Vital Area of Labor Relations From the Exclusive Regulation of the National Labor Relations Board	15
(6) The Decision of the Illinois Supreme Court Seriously Threatens the Exercise of Free Speech and Press	17
Conclusion	21

Appendix:

A. Opinion of the Supreme Court of Illinois, 21 Ill. 2nd 605	1a

TABLE OF AUTHORITIES

CASES: Page

Amalgamated Meat Cutters, AFL v. Fairlawn Meats, Inc., 353 U.S. 20 ..... 8, 9, 10, 13, 14
Freeman v. Retail Clerks Union, Local No. 1207, 363 P. 2d 803 ..... 14, 15
Goldstone v. Payne, 94 F. 2d 855, cert. den., 304 U.S. 585 12
Guss v. Utah Labor Relations Board, 353 U.S. 1 ..8, 9, 10
Labor Board v. Babcock and Wilcox Co., 351 U.S. 105 ..... 8, 13, 16
Marsh v. Alabama, 326 U.S. 501 ..... 8, 18, 20
M. C. & L. M. Railway Co. v. Swan, 111 U.S. 379, 384 12
Mitchell v. Maurer, 293 U.S. 238, 244 12
San Diego Building Trades Council v. Garmon, 359 U.S. 236 ..... 8, 9, 10, 15

STATUTES:

First Amendment to the Constitution of the United States 3, 7
Fourteenth Amendment to the Constitution of the United States 4, 7
28 U.S.C., Section 1257(3) 1
Illinois Criminal Trespass Statute, Chapter 38, Section 565, Illinois Revised Statute, 1959 ..... 2, 7
Section 7 of the Labor Management Relations Act of 1947, 29 U.S.C. § 157 ..... 3, 14, 15
Section 8(a)(1) of the Labor Management Relations Act of 1947, 29 U.S.C. § 158(a)(1) 3, 14, 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No.

LEONARD D. GODUTO AND NATHAN FRIEDMAN,
Petitioners,

VS.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of Illinois

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 21 Ill. 2d 605, and is attached hereto as Appendix A.

STATEMENT OF JURISDICTION

The opinion of the Supreme Court of Illinois was filed and entered of record on April 26, 1961. The order of this Court extending the time within which to file a petition for Writ of Certiorari to September 23, 1961, was entered July 17, 1961. The jurisdiction of this Court is based upon 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether a state court has jurisdiction to apply its criminal trespass laws to labor union organizers who are engaged in conduct subject to regulation by the National Labor Relations Board solely because the union has not filed unfair labor practice charges against the employer who has denied the union access to a customer parking lot.

2. Whether a state court has jurisdiction to apply its criminal trespass laws to labor union organizers who are engaged in conduct subject to regulation by the National Labor Relations Board until such time as there has been a "determination" by the Board of the union organizers' right to enter the employer's customer parking lot.

3. Whether the First and Fourteenth Amendments to the United States Constitution protect the right of labor union organizers to distribute handbills to employees on a privately owned parking lot which is unenclosed and generally open to the public.

STATUTES INVOLVED

The Illinois Criminal Trespass Statute, Chapter 38, Section 565, Illinois Revised Statutes, 1959, to wit:

> "Whoever is about to enter unlawfully upon the enclosed or unenclosed land of another and is forbidden so to do by the owner or occupant, or by his agent or servant, and thereafter enters upon such land, or whoever is unlawfully upon the enclosed or unenclosed land of another and is notified to depart therefrom by the owner, or occupant, or by his agent or servant, and neglects or refuses so to do, or whoever wilfully or unnecessarily or without right enters any orchard, nursery, garden or any farm premises or improved farm land of

another when a printed or written notice forbidding or prohibiting trespass in general or in any detail has been conspicuously posted or exhibited at the main entrance to such orchard, nursery, garden, farm premises or farm land, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars."

Sections 7 and 8 of the Labor Management Relations Act, 1947, as amended, 61 Stat. 140, 29 U.S.C. § 157 and 29 U.S.C. § 158(a)(1), to wit:

Section 157. "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 158. "(a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title."

The First Amendment to the Constitution of the United States, to wit:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the Constitution of the United States, to wit:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioners, labor union representatives, were convicted by the Municipal Court of Chicago of criminal trespass for distributing union leaflets to employees of Sears Roebuck & Co., (hereinafter referred to as "Sears") on a customer parking lot leased by the company. On appeal to the Illinois Supreme Court, the conviction was affirmed.

Sears is a nationwide retail department store and mail order chain. The store in question is located in the City of Chicago. It was stipulated by the parties that the store's annual retail sales exceed $500,000.00 per year, a portion of which includes the sale of merchandise emanating from points outside of the State of Illinois. It was further stipulated that the company is engaged in commerce within the meaning of the Labor Management Relation Act (R-4-5).[1]

Adjacent to the store is a paved, unenclosed area used as a customer parking lot (R-14). The store, to-

[1] All record references are to the pages of the Consolidated Abstract of Records found on page 5 of the transcript of proceedings.

gether with the parking lot, occupies an area bounded on three sides by public streets and on the fourth side by railroad tracks. There are five driveway entrances to the parking lot from the streets (R-12).

One entrance to the store adjoins the parking lot; the other store entrance adjoins the public sidewalk. In order to use the parking lot entrance to the store, it is necessary to enter upon and cross the parking lot (R-14). The parking lot entrance to the store is the only entrance used by employees prior to 9:30 A.M., the time the store is open for business. Similarly, this entrance is the only one used by employees at the close of the business day (R-12).

Approximately 430 employees work at the store (R-14). The employees are not distinguishable from the general public by uniform or identity badge (R-13). When reporting to work they enter the parking lot from all directions, and up to 75% of them enter by automobile (R-14-16).

On March 11, 1959, at 8 A.M., petitioners entered the parking lot for the sole purpose of distributing union leaflets to employees as they reported to work. (R-16). Inasmuch as the parking lot entrance to the store was the only one used by the employees, petitioners stationed themselves on the parking lot about 15 feet from this entrance (R-6), and thereupon proceeded to distribute leaflets to the employees as they approached the store entrance.

The leaflet distribution was the union's initial attempt to communicate with employees of the particular Sears store. The leaflets were addressed to the employees, urged union organization and informed the employees of the union's desire to help them obtain bet-

ter wages and working conditions (R-19). Attached to the leaflet was a questionnaire pertaining to employees', wages, hours and working conditions (R-20-21).

At about 8:30 A.M. on the day in question, while petitioners were distributing leaflets to the employees, they were approached by the Operating Superintendent of the store. The Operating Superintendent examined the leaflet handed to him, and, after establishing that it was being distributed by a labor organization, informed petitioners that they were on Sears' property and asked them to leave the parking lot (R-13). Petitioners declined to leave, asserting a legal right to remain on the parking lot. Thereupon the Operating Superintendent called the police and caused petitioners' arrest (R-11).

During the course of the trial, petitioners offered to prove that the names and addresses of employees were unknown and unavailable; that only through leaflet distribution would the union be able to initiate an organizing campaign at the store; that, until the union established through this initial contact some communication with employees and secured therefrom the names and addresses of employees, it was in no position to proceed with organizing activities off the premises in question (R-23). Further, the union offered to prove that members of the general public frequently used the parking lot without objections, as a convenient short cut between two streets (R-17).

During the course of the trial, petitioners urged by oral argument and in briefs to the trial court that petitioners were exercising rights of free speech and press guaranteed by the federal and State constitutions

and were exercising rights protected by the Labor Management Relation Act, and for this latter reason urged that the state court had been divested of jurisdiction (R-24).

On October 29, 1959, the trial court found petitioners guilty under the State Trespass Statute and fined each petitioner $25.00 and costs (R-4; 24-28). From this order, petitioners appealed to the Supreme Court of Illinois.

In affirming the order of the trial court, the Illinois Supreme Court ruled directly on the constitutional and jurisdictional questions raised by petitioners. Concerning the issue of state jurisdiction, the Illinois Supreme Court recognized that the matter of solicitation by non-employee organizers on company property is an activity regulated by the N.L.R.B. under the Labor Management Relation Act, as amended, and that under certain circumstances such solicitation is protected by Section 7, which guarantees employees the right of self organization, and that interference therewith is prohibited by Section 8, which condemns such interference as an unfair labor practice.

Further, the Illinois Supreme Court recognized that it must abstain from regulation of activity which is potentially protected by Section 7 or prohibited by Section 8. Nevertheless, it held that it had authority to find petitioners guilty of criminal trespass because petitioners had failed to seek from the National Labor Relations Board a "determination" of their right to be on the customer parking lot.

Concerning the issue of freedom of speech and press, the Illinois Supreme Court ruled that the First and Fourteenth Amendments to the federal constitution

did not give the petitioners the right to remain on the parking lot after they had been ordered to leave. In substance, the Illinois high court concluded that property rights occupy a preferred position in competition with the right of free speech. In this regard, the Court distinguished *Marsh* v. *Alabama,* 326 U.S. 501, on the sole ground that *Marsh* involved solicitation in a company town.

REASONS FOR ALLOWANCE OF WRIT

1. The State Court's Assertion of Jurisdiction Over Union Activities Subject to Regulation by the Labor Management Relations Act Is in Direct Conflict With Decisions of This Court.

Noting the decisions of this Court in *National Labor Relations Board* v. *Babcock & Wilcox Co.,* 351 U.S. 105, and the long line of preemption case culminating with *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, the Illinois Supreme Court recognized that solicitation of employees on company property is arguably subject to exclusive federal regulation under the Labor Management Relations Act, and recited the salient legal principles which should have required it to decline jurisdiction. However, troubled by the fact that only petitioners could apply to the Labor Board for a "determination" of their right to be on company property, the state court asserted its jurisdiction in this case solely because of the failure of petitioners to pursue the Labor Board remedy.

The novel and astounding theory of jurisdiction, advanced without benefit of case or statutory authority, is in direct conflict with governing decisions of this Court, *Guss* v. *Utah Labor Relations Board,* 353 U.S. 1, *Amalgamated Meat Cutters, AFL* v. *Fairlawn Meats, Inc.,* 353 U.S. 20, and *San Diego Building Trades*

Council v. *Garmon*, 359 U.S. 236. The Illinois Court asserted state court jurisdiction because it found unpalatable the fact that it could be deprived of jurisdiction while at the same time the Labor Board's jurisdiction might remain unexercised because of the failure of petitioners to file charges with the federal agency. The state court decision is nothing more than the "no-man's land" argument rejected by this Court in *Guss* and *Fairlawn*. These cases declare that the states may not infringe upon the area of industrial relations covered by the Act merely because the jurisdiction of the Labor Board has gone unexercised. "* * * the failure of the Board to define the legal significance under the Act of a particular activity does not give the States the power to act." *San Diego Building Trades* v. *Garmon*, 359 U.S. 236, 246.

In *Guss* and *Fairlawn* the Board voluntarily refused to exercise its own jurisdiction, while in the instant case petitioners did not affirmatively invoke the Board's jurisdiction. The decision of the Illinois Supreme Court apparently believed that this difference was one of substance which warranted the exercise of state court jurisdiction. *Garmon, Guss* and *Fairlawn* are simply contrary to this view. This Court has observed that the Board may fail to act for a variety of reasons.[2] However, the concern of this Court has not been with the mechanics of invoking the Board's jurisdiction or the reasons why the Board has failed or refused to assert its jurisdiction. This Court has

[2] "However, the Board may also fail to determine the status of the disputed conduct by declining to assert jurisdiction, or by refusal of the General Counsel to file a charge, or by adopting some other disposition which does not define the nature of the activity with unclouded legal significance." *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245-246.

focused on the problem of the potential conflict inherent in concurrent federal and state regulation of labor relations in commerce. "The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy." *San Diego Building Trades* v. *Garmon*, 359 U.S. 236, 246. In keeping with this principle, the reason why the Board has failed to act can be of no consequence. The danger of conflict is at least equally great where the legal significance of the conduct remains undefined because the Board's jurisdiction was not invoked as in cases where the Board voluntarily declines jurisdiction.[3]

While the state court decision appears to be based on the failure of petitioners to invoke the Board's jurisdiction, the fact is that the decision goes much further. It asserts the state courts' right to act in this field pending a Board "determination" of the issues. If the state court's concern was limited to the failure of petitioners to file unfair labor practice charges, presumably petitioners could have gained re-entry to the parking lot by the simple act of filing such charges. However, as we read the state court's decision, it requires petitioners not only to file unfair charges but also to stay off the employer's property until such time

---

[3] If anything, the danger of conflict may be said to be greater in the instant case because the Board's jurisdiction merely lies dormant, subject to being invoked at any time. Thus, the state could convict a union organizer of criminal trespass only to have the Board subsequently declare the right to communicate on employer property. In *Guss* and *Fairlawn* the pre-announced jurisdictional standards of the Board precluded a determination of the legal significance of the conduct in question.

as the Board determines its right to be there. This is implicit in the following statement of the Court:

> "After they had learned that the company did not want them on the lot and warned them that the police would be called, they still insisted they had a right to be there. At this point they could have left and applied to the National Labor Relations Board for a determination of their right to be on the property." (Appendix 7a.)

The Illinois Court candidly posed the question as follows:

> "This presents the question of *whether our State courts can apply the criminal trespass statute without a prior determination by the Board of* whether the no-solicitation rule is valid and whether it is being fairly applied." (Appendix 7a.) (Emphasis added.)

The state court decision is patently erroneous not only because it is predicated upon the union's failure to invoke federal jurisdiction but also because it stands for the proposition that the state has jurisdiction over conduct subject to federal regulation *until* such time as the Labor Board determines the legal significance of the conduct. This latter proposition is independent of the question of whether or not the Board's jurisdiction has been or will be invoked and conflicts directly with decisions of this Court.

The holding of the state court that it was vested with jurisdiction, because of the course of conduct followed by petitioners, strikes at the very heart of federal preemption. The cornerstone of the doctrine is the Board's exclusive jurisdiction over the *subject matter* of industrial relations in commerce. The decision of the Illinois court is flatly inconsistent with the federal pre-

emption doctrine because the Illinois court held that the N.L.R.B.'s exclusive jurisdiction may be affected by the decision of petitioners as to whether *they* will invoke federal jurisdiction. Clearly, subject matter jurisdiction may not be conferred upon a court by the conduct of the parties. *M. C. & L. M. Railway Co.* v. *Swan,* 111 U.S. 379, 384; *Mitchell* v. *Maurer,* 293 U.S. 238, 244; *Goldstone* v. *Payne,* 94 F. 2d 855, cert. den., 304 U.S. 585.

2. The Decision of the Illinois Supreme Court Establishes a Major Exception to the Preemption Doctrine Which Seriously Threatens the Establishment of a Uniform Labor Policy.

For the first time a state court has asserted jurisdiction over federally regulated conduct solely because of the failure of a party to pursue the Labor Board remedy. Not a single decision of this Court supports the state court's jurisdictional theory. The Illinois Supreme Court has carved out a major exception to the preemption doctrine of this Court. As stated above, the jurisdictional theory of the Illinois Court should be rejected as contrary to the prior decisions of this Court. If this Court had intended to create such an important exception to the preemption doctrine, it would have done so.

The state court decision, while framed in the factual context of solicitation on employer property, transcends even this vital issue, and extends to a multitude of situations in which a union is engaged in activities protected by Section 7 of the Act. In all such cases, the jurisdiction of the Board may be invoked only by a union's filing charges complaining of interference with protected activity. Under the state court's theory, this fact would give rise to state jurisdiction over the protected activity if the union failed to file charges. The

right to strike, the right to bargain collectively and the right of self-organization would come under state regulation if the decision of the Illinois Supreme Court is not reversed.

Seldom has a state court decision so dramatically challenged the exclusive role of the National Labor Relations Board. The fact that the case is one of first impression, having a far reaching effect upon federal jurisdiction over labor relations, warrants allowance of the petition for writ of certiorari.

3. The Instant Case Raises Important Questions Concerning Construction and Interpretation of the Trespass Aspect of the Fairlawn Decision.

In *Fairlawn*, a question was presented to this Court as to whether an Ohio state court had jurisdiction to enjoin conduct in violation of an Ohio trespass law. This Court held:

> "Whether a state may frame and enforce an injunction aimed narrowly at a trespass of this sort is a question that is not here."

The case at bar raises the question of the proper construction to be given the trespass phase of the *Fairlawn* case.[4] Did this Court intend that a state decision limited exclusively to the issue of trespass would receive its approval, and is the instant case so limited?

We submit that under the authority of *Labor Board* v. *Babcock and Wilcox Co.*, 351 U.S. 105, the states may

---

[4] The Illinois Supreme Court construed *Fairlawn* as reserving the "question of whether a State may enforce a no-trespass rule *where no effort has been made to invoke the jurisdiction of the National Labor Relations Board.*" (Emphasis supplied.) This is a plain misstatement of the case. The Court's refusal to pass on the trespass question was completely unrelated to the failure of the union to file charges.

not regulate solicitation of employees on employer property, through enforcement of state trespass laws, even though the state action is technically based only on trespass grounds. In any event, it is obvious that in the instant case the state action reaches not only the matter of trespass but also conduct subject to exclusive federal regulation under the Act.

No matter how sincerely the Illinois Court professed not to be deciding federal questions, the fact is that its decision has this precise effect. The trespass issue is inseparably interwoven with rights under Section 7 and prohibited conduct under Section 8 of the Act. As the Illinois Court recognized, if solicitation on company property is protected under the Act, then the "act of trespass is justified by the necessity to preserve the freedom to solicit for union organization." By holding petitioners guilty of trespass, the State Court has prejudged this question. We do not believe that this Court intended such a result when it declined to pass on the trespass issue in the *Fairlawn* case.

4. The Decision of the Illinois Supreme Court Is in Direct Conflict With a Decision of the Supreme Court of the State of Washington.

The instant case is the first decision of a state court of last resort dealing with the preemption and constitutional aspects of labor communication on employer property. Recently, on July 20, 1961, a second decision in this field was rendered by the Supreme Court of the State of Washington, *Freeman* v. *Retail Clerks Union, Local No. 1207*, 363 P.2d 803. The Washington case involves the precise jurisdictional and constitutional issues found in the case at bar. In the Washington case, the Union was picketing a store located in a shopping center, and the owners of the shopping center

property sought to enjoin the Union from trespassing on their property. Relying on the decision of this Court in *Garmon*, the Washington Supreme Court concluded that it was without jurisdiction because the controversy was subject to exclusive federal regulation under Sections 7 and 8 of the Labor Management Relations Act.

On the question of jurisdiction, the Washington case and the case at bar present no material factual differences. Both cases involve the use of private property for the purpose of engaging in conduct regulated by the Act. In neither case was the jurisdiction of the Labor Board formally invoked. Thus, on the same legal issue, in substantially similar factual backgrounds, two state courts have reached totally inconsistent conclusions concerning their jurisdiction. The conflicting opinions of the Illinois and Washington Supreme Courts on this vital issue are further reason why the petition of certiorari should be granted in the instant case.

5. The Decision of the State Court Will Remove a Vital Area of Labor Relations from the Exclusive Regulation of the National Labor Relations Board.

In the last several years this country has witnessed a revolutionary relocation of retail stores from downtown locations on public streets and sidewalks to suburban property surrounded by privately owned customer parking areas and separated from the public streets. In some cases, such as in *Freeman* v. *Retail Clerks Union*, 363 P.2d 803, these parking facilities are shared by several employers and have been termed "shopping centers." In other cases, as in the case at bar, parking facilities are limited to a single employer. In both situations, parking areas have eliminated the public side-

walk as the point of access to the employees' place of employment and have created a buffer between the employees and those who would communicate with them regarding vital public issues.[5] The public sidewalk, the traditional place for the expression of views and the dissemination of information on issues of privileged constitutional status, is rapidly being replaced by the privately owned customer parking area.

As more and more retail establishments are removed from the public streets and sidewalks, the problem of communicating with employees intensifies. Countless thousands of retail employees are today separated from union organizers by private property in the form of the customer parking lot. The extent to which the customer parking lot will or will not act as a barrier to self-organization is a problem of great magnitude which should not be removed from the exclusive area of Board regulation.

In *Labor Board* v. *Babcock and Wilcox Co.*, 351 U.S. 105, 112, this Court explained that the solicitation of employees on employer property "is not a problem of always open or always closed doors for union organization on company property." The Court recognized that the problem was one of reaching an accommodation between organization rights and property rights, and the Court concluded that "the determination of the proper adjustments rests with the Board." The decision of the State Court removes this authority from the Board.

---

[5] While several entrances to the Sears store front on public sidewalks, the record shows that at the time employees entered and departed the store they used the customer parking lot entrance exclusively, and that this entrance could be reached only by crossing the parking lot (R-12-14).

6. The Decision of the Illinois Supreme Court Seriously Threatens the Exercise of Free Speech and Press.

Petitioners entered the quasi-public customer parking lot for the sole purpose of disseminating the message of organized labor, under circumstances which made the parking lot the only feasible area for effective communication. They conducted themselves in an orderly and peaceful manner and in no way did they interfere with use of the customer parking lot or operation of the employer's business. The assertion of private property rights, which caused their arrest and subsequent conviction for criminal trespass, was plainly of the most technical nature and was not a means of protecting legitimate property rights and interests but was a device to frustrate self-organization among the employees.[6] In this context the Illinois Supreme Court flatly ruled that the constitutional guarantees of free speech and press do not extend to the distribution of union leaflets on a privately owned, customer lot.

It is evident that the state court did not take into account the quasi-public nature of the customer parking lot and did not assign importance to such questions as whether effective employee solicitation could take place off the parking lot, or the extent to which the use of the parking lot for such purposes would result in a dislocation of property rights. In effect, the state court concluded that property rights occupy a preferred position when in competition with the rights of free speech and press. Such sacrosanct views of property rights are in direct conflict with this Court's deci-

---

[6] Significantly, petitioners were not ordered off the property until after the operating superintendent of the store established that the leaflet contained a union message (R-13).

sion in *Marsh* v. *Alabama*, 326 U.S. 501, and is predicated upon the erroneous assertion that *Marsh* is distinguishable from the case at bar solely because *Marsh* involved solicitation in a company town.

Marsh establishes that "ownership does not always mean absolute dominion", but that the task of the judiciary is to balance the competing rights of private property and free speech so as to reach an accommodation between them which will best serve the interests of our society. In this balancing process this Court has declared that First Amendment rights occupy a "preferred position." Further, the balancing process requires that due regard be given to the quasi-public nature of the property. "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." Clearly, it is a distortion of the First Amendment to hold that these principles have meaning only in cases involving company towns.

In each case, whether it involves a company town, a customer parking lot, a shopping center or some other form of private property, the following factors must be considered: the limitations imposed upon the enjoyment of free speech and press by reason of the physical nature of the property; the interference with legitimate property interests which would result from the exercise of free speech and press on private property; the extent to which the property has already been dedicated to public use; and finally, the social desirability of the subject matter being communicated. Which of the two competing rights must be made subservient to the other should depend on the answer to these questions and not the physical situs of the com-

petition. Directing these questions to the facts in the case at bar, the right of free speech and press should prevail for the following reasons:

1. The opportunity for effective communication with employees off the customer parking lot was extremely limited, if not totally lacking. The employer chose to limit employee access to and egress from the store to the one entrance which fronted on the customer parking lot (R-12). Only by stationing themselves near this entrance could petitioners be assured of making contact with a significant number of the employees. To have attempted distribution of leaflets on the public streets surrounding the parking lot would have been futile because of the number of entrances to the parking lot (R-12), the fact that many of the employees entered the parking lot by auto (R-12-14), and the fact that none of the employees could be identified by badge or uniform (R-13). Similarly, the use of other media of communication was impossible because petitioners did not have the names or addresses of any of the employees (R-23). In short, the customer parking lot was the only suitable area for effective communication with employees.

2. There is not a scintilla of evidence showing even the slightest prejudice to the property rights of the employer. The leaflet distribution was carried out in a peaceful and orderly manner and in no way interfered with the use of the parking lot or the operation of the employer's business. Patently, the case presents nothing more than a naked assertion of property rights, unrelated to the protection or preservation of legitimate property interests.

3. The parking lot was used freely by members of the general public (R-17). By physical design, prior

usage, and lack of posted restriction, it had all the earmarks of a quasi-public area.

4. Petitioners were attempting to disseminate information leading to employee organization for purposes of collective bargaining. Petitioners were not engaged in some academic pursuit of free speech and press but were seeking to further and promote a goal which Congress has deemed desirable and has fostered and safeguarded through the Labor Management Relations Act.

In summary, applying the balancing process to the case at bar it must be concluded that the rights of free speech and press would suffer serious impairment if property rights prevail, contrasted with the total absence of real prejudice to property rights if the Constitutional rights of free speech and press prevail.

To conclude, the constitutional issue in this case warrants the Court's attention for a multiplicity of reasons. The case presents the sensitive problem of resolving the conflict between property rights and the right of the people to enjoy freedom of speech and press. The state court decision raises the serious question of whether *Marsh* v. *Alabama* is limited to cases involving company towns. The state court decision elevates property rights to virtually absolute status. The question of free speech and press as it relates to solicitation of employees on employer property is a relatively unexplored area of judicial inquiry. Finally, because of the increasing number of shopping centers and customer parking lots, and the consequent displacement of the public sidewalk as the forum for the dissemination of the message of organized labor, the decision of the state court will affect the future of self-organization for millions of employees who, by reason

of the location of their place of employment, are isolated from contact and communication with labor union representatives.

CONCLUSION

For all the reasons hereinabove set forth, petitioners respectfully urge that this petition for a Writ of Certiorari be granted.

ROBERT KARMEL
33 North LaSalle Street
Chicago 2, Illinois

S. G. LIPPMAN
DeSales Building
Washington 6, D. C.

TIM L. BORNSTEIN
1741 DeSales Street, N.W.
Washington 6, D. C.

Attorneys for Petitioners.

APPENDIX

Nos. 35745-35746 Cons.—Agenda 48—January, 1961.
The People of the State of Illinois, Appellee v. Leonard D. Goduto *et al.*, Appellants.

Mr. Justice House delivered the opinion of the court:

The municipal court of Chicago in separate trials found defendants Leonard D. Goduto and Nathan Friedman guilty of criminal trespass and fined each of them $25 and costs. The two cases have been consolidated for review in this court because the same fairly debatable constitutional question was presented to and passed upon by the trial court in each case. *People* v. *Watkins*, 19 Ill. 2d 11.

The alleged trespass occurred on property leased by Sears, Roebuck and Company. The property is adjacent to a retail store operated by the company and has been paved for use as a parking lot by employees and customers of the store. On March 11, 1959, the defendants, who are union representatives of Local 1550, Retail Clerks International Association, AFL-CIO, entered upon the parking lot for the sole purpose of distributing union leaflets and questionnaires to employees at the store. Eugene Reuter, operating superintendent of the store, told the defendants who he was, informed them that the company did not permit soliciting on its property without its permission and asked them to leave the premises. They refused and he again asked them to leave. They told him they had a legal right to solicit on the property. He asked them to leave a third time and warned them that he would call the police. They still insisted that they had the right to be on the property. Reuter thereupon called the police and defendants were arrested. They were tried and found guilty of violating section 266 of division I of the Criminal Code (Ill. Rev. Stat. 1957, chap. 38, par. 565,) which provides: "Whoever * * * is unlawfully upon the enclosed or unenclosed land of another and is notified to depart therefrom by the owner, or occu-

pant, or by his agent or servant, and neglects or refuses so to do, * * * shall be guilty of a misdemeanor * * *."

The defendants contend that the trial court had no jurisdiction to convict them of criminal trespass because Congress by the enactment of the National Labor Relations Act, (49 Stat. 449,) and its extensive amendments, (61 Stat. 136, 29 U.S.C.A. 151 *et seq.*,) has divested this State of the power to interfere with the labor activity in which they were involved by means of a trespass prosecution. We accept the defendants' and Attorney General's view that the activities of the store in question affect interstate commerce within the meaning of the National Labor Relations Act. We also assume, although the point was not raised, that we cannot assert jurisdiction under the provisions of section 14 of the National Labor Relations Act as amended. (29 U.S.C.A. 164.) The arguments of the defendants and the Attorney General are therefore properly focused on the question of whether Federal legislation has divested us of power to deal with the activity here involved by means of a criminal trespass action.

We recognize that when an activity is protected by section 7 or prohibited by section 8 of the National Labor Relations Act, the States must abstain from regulation; (*International Union, UAW* v. *O'Brien*, 339 U.S. 454, 70 S. Ct. 781; *Garner* v. *Teamsters Union*, 346 U.S. 485, 74 S. Ct. 161; *Weber* v. *Anheuser Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480; *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 79 S. Ct. 773;) and when the activity is arguably subject to section 7 or section 8 of the act, the States must yield to the primary jurisdiction of the National Labor Relations Board for a clear determination of the question. (*San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236; *Weber* v. *Anheuser Busch, Inc.*, 348 U.S. 468; *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1, 77 S. Ct. 598.) Yet State jurisdiction has prevailed where a labor activity involves violence or incitement to violence. (*Youngdahl* v. *Rainfair, Inc.*, 355 U.S. 131, 78 S. Ct. 206;

United Construction Workers, etc. v. *Laburnum Const. Corp.*, 347 U.S. 656, 74 S. Ct. 833.) And although employers' property rights are limited by the need to protect employees' rights under the act and a determination of this need is committed primarily to the National Labor Relations Board, (*National Labor Relations Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 76 S. Ct. 679;) the Supreme Court has expressly reserved the question of whether a State may enforce a no-trespass rule where no effort has been made to invoke the jurisdiction of the National Labor Relations Board. (*Amalgamated Meat Cutters, AFL* v. *Fairlawn Meats, Inc.*, 353 U.S. 20, 77 S. Ct. 604.) With these general principles in mind we proceed with an examination of our right to assert jurisdiction in this case.

Any unauthorized entry on the land of another or unlawfully remaining on the premises of another is a trespass for which the law provides a civil remedy. (*Checkley* v. *Illinois Central Railroad Co.*, 257 Ill. 491; *Mead* v. *Pollock*, 99 Ill. App. 151; 52 Am. Jur., Trespass, sec. 11.) Trespass was not a crime at common law, however, unless it was accompanied by or tended to create a breach of the peace. (*Busick* v. *Illinois Central Railroad Co.*, 201 Ill. App. 63.) It is apparent therefore that the criminal sanctions of the common law were not imposed primarily for the protection of property rights but were imposed for the protection of public safety. This was a recognition of the fact that trespass can lead to violence. Indeed the owner or occupant of land has the right to use any force necessary to remove a trespasser in situations where there is no time to resort to the law. (See Prosser, Torts 2d ed., sec. 21.) However, the distinction between trespasses for which there was only civil liability and those for which there was also criminal liability was not made clear by the common law. (52 Am. Jur., Trespass, sec. 84.) Our legislature in 1874 made certain acts of trespass punishable as crimes, (Rev. Stat. 1874, p. 348,) thereby removing the uncertainties that existed at common law.

When a person refuses to leave another's property after he has been ordered to do so, a threat of violence becomes imminent. It was for this reason that the legislature made this type of trespass subject to criminal prosecution. The basic purpose of the statute is the prevention of violence or threats of violence. Of course, it also affords protection to property rights which is a proper subject for the imposition of criminal sanctions.

The defendants have made much of the fact that there was no violence in this case. We believe, however, that this was due to the fact that the company did not resort to self-help to remove defendants from the premises. The defendants were on property occupied by Sears, Roebuck and Company. The company's agent believing the defendants had no right to be on the property ordered them to leave three times. The defendants believing they had a right to be there refused to leave. At this point the company called the police. If the State had not taken charge of the situation, the company would have had no alternative but to forcefully remove the defendants. We cannot know the amount of force that would have been necessary to remove them, but the threat of violence in such a situation is imminent. See *e.g., Marshall Field & Co.* v. *National Labor Relations Board*, (7th cir.) 200 F. 2d 375.

In addition to the State's interest in preserving domestic peace, the law recognizes the company's right to protect its property interests. The leading case on the right of non-employee union organizers to distribute union literature on company-owned parking lots is *National Labor Relations Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 76 S. Ct. 679. The court there stated: " • • • an employer may validly post his property against non-employees distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if employer's notice or order does not discriminate against the

union by allowing other distribution." In these circumstances the court recognizes the property interest of the employer to be superior to the interest of the union in having a convenient means of communicating with employees. The notice or order of the employer is of little consequence, however, if it cannot be enforced.

As we have indicated, the criminal trespass statute does protect property rights in situations where violence or an imminent threat of violence is present. If the employer cannot avail himself of this statue, which is general in its application and would be available to him against any other supposed trespasser, he must resort to self-help, for he can obtain no preventive relief under the National Labor Relations Act. The Supreme Court has stated that when legitimate interests of employees and employers collide, protection of the employees' interest under the National Labor Relations Act is not so absolute as to deny self-help by employers. (*National Labor Relations Board* v. *Truck Drivers Local Union No. 449, AFL*, 353 U.S. 87, 77 S. Ct. 643.) Although the employer may use self-help in such a situation such remedy may be wholly inadequate and it presents a threat of violence.

On the other hand, the union organizers who feel that their statutory rights have been invaded by an employer's refusal to permit them to enter on its property may secure relief through the National Labor Relations Board. (See *National Labor Relations Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 76 S. Ct. 679.) The Board can, in a proper case, order the employer to cease and desist from "preventing, by ejection, threat of arrest, and arrest, non-employee union organizers from soliciting employees for union membership" on certain portions of the company's property. (*Marshall Field & Co.* v. *National Labor Relations Board*, 200 F. 2d 375, 376-77.) This has been the procedure generally followed by the unions. See *e.g.*, *National Labor Relations Board* v. *Babcock & Wilcox Co.* (5th cir.) 222 F. 2d

316; *National Labor Relations Board* v. *Seamprufe, Inc.* (10th cir.) 222 F. 2d 858; *National Labor Relations Board* v. *Ranco, Inc.* (6th cir.) 222 F. 2d 543; *National Labor Relations Board* v. *Cranston Print Works Co.* (4th cir.) 258 F. 2d 206; *National Labor Relations Board* v. *Great Atlantic & Pacific Tea Co.* (5th cir.) 277 F. 2d 759.

We believe that the maintenance of domestic peace and the absence of any preventive relief for the protection of the employer's property rights is of sufficient importance to give our State courts jurisdiction to enforce the criminal trespass statute under the circumstances of this case.

This brings us to the question of whether the defendants' act of trespass as defined by the statute was justified or excused. We recognize that solicitation by nonemployee union organizers on company property is an activity protected by section 7, and that interference with this activity is prohibited by section 8 of the National Labor Relations Act when it can be shown that there is no reasonable alternative channel of communication with the employees or where a valid no-solicitation rule is being unfairly applied. (*Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793, 65 S. Ct. 982; *National Labor Relations Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 76 S. Ct. 679; *National Labor Relations Board* v. *United Steelworkers of America, CIO*, 357 U.S. 357, 78 S. Ct. 1268.) Under such circumstances the act of trespass is justified by the necessity to preserve the freedom to solicit for union organization.

In the *Babcock & Wilcox Co. case*, however, the court pointed out: "This is not a problem of always open or always closed doors for union organization on company property. Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other. The employer may not

affirmatively interfere with organization; the union may not always insist that the employer aid organization. * * * The determination of the proper adjustment rests with the Board." (351 U.S. 105, 112, 76 S. Ct. 679, 684.) Thus, the determination of whether there are no other reasonable alternative channels of communication with employees or the no-solicitation rule is being unfairly applied is committed primarily to the National Labor Relations Board, (See *National Labor Relations Board* v. *Truck Drivers Local Union No. 449, AFL*, 353 U.S. 87, 77 S. Ct. 643,) and we have no jurisdiction to determine such questions.

Apparently no effort has been made to invoke the jurisdiction of the National Labor Relations Board in this case. This presents the question of whether our State courts can apply the criminal trespass statute without a prior determination by the Board of whether the no-solicitation rule is valid and whether it is being fairly applied.

There is no indication that a request was ever made of Sears, Roebuck & Company to use the parking lot for distribution of union literature. (Cf. *National Labor Relations Board* v. *United Steelworkers of America, CIO*, 357 U.S. 357, 78 S. Ct. 1268.) Apparently the defendants just appeared on March 11, 1959, and began distributing the leaflets on the parking lot. After they had learned that the company did not want them on the lot and warned them that the police would be called, they still insisted they had a right to be there. At this point they could have left and applied to the National Labor Relations Board for a determination of their right to be on the property. (See: *National Labor Relations Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 76 S. Ct. 679.) They have made no effort, however, to have the proper forum make a determination of their right to be on the company's property but insist that they might have such a right and that we are therefore without power to interfere with their conduct. The anomaly of the situa-

tion is that the Board cannot make such a determination either, unless the union seeks it and apparently they are not going to do so.

We believe that under these circumstances the trial court had the power to find the defendants guilty of violating the criminal trespass statute although it had no jurisdiction to determine whether the trespass was justified under section 7 of the National Labor Relations Act or whether the Company was committing an unfair labor practice under section 8 of the act by enforcing the no-trespass rule. Congress has given union organizers the right to go on company property under certain circumstances and has provided a procedure for determining and enforcing this right. The union has failed to follow the procedure that Congress has provided. We are unwilling to hold that the State courts are divested of jurisdiction, not because Congress has preempted the area, but because of the course the union organizers have followed.

The defendants also contend that the trial court erroneously convicted them of criminal trespass because they were "lawfully" upon the premises occupied by Sears, Roebuck and Company. They argue that there are no other reasonable channels of communicating with the employees at the store in question and therefore the constitutional guarantee of free speech gives them the right to remain on the property after notice to leave.

The defendants candidly point out that this constitutional question has not heretofore been decided by any State supreme court. The apparent reason for the lack of authority on this question is that solicitation by nonemployee union organizers on company property is, under the conditions here alleged, an activity that may be protected by section 7 of the National Labor Relations Act, and interference with this activity may be prohibited by section 8 of the act. The unions, as we have heretofore indicated, have generally pursued the remedy available to them under the act when

they believed their statutory right had been invaded. In this case, however, jurisdiction of the proper forum for determining defendants rights under the National Labor Relations Act has not been invoked and we must therefore determine whether they had a right to be on the property by virtue of the constitutional guarantee of free speech and free press.

Defendants state that the case that is most analogous to this one is *Marsh* v. *Alabama*, 326 U.S. 501, 66 S. Ct. 276. There a distributor of religious literature was convicted of criminal trespass because she remained on the sidewalk of a company-owned town after she had been warned to leave. The Supreme Court held that the application of the Alabama trespass statute, under the circumstances of that case, violated freedom of press and religion guaranteed by the first and fourteenth amendments.

Despite the fact that certain language in that opinion concerning the right to use private property for speech, press and assembly would appear to support defendant's contention when that language is not read in the light of the facts of the *Marsh case*, we believe that the case "goes no further than to say that the public has the same rights of discussion on the sidewalks of company towns that it has on the sidewalks of municipalities." (*National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U.S. 226, 242, 69 S. Ct. 541, 549 (dissenting opinion).) The present case does not involve a company town. It is recognized that freedom to solicit for union organization will, under certain circumstances, require an employer to allow the solicitor to approach employees on his property. (*National Labor Relations Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 76 S. Ct. 679,) but this freedom of solicitation is the result of a regulatory statute and not a constitutional right. See: *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793, 65 S. Ct. 982, 988.

We hold that freedom of speech and press guaranteed to defendants by the first and fourteenth amendments to the Federal constitution and by section 4 of article II of our constitution did not give them the right to remain on the parking lot after they were ordered to leave.

It is also argued that the People failed to prove that Sears had the right to exclude defendants from the property. It is admitted that Sears is the lessee of the property; that the property is used as a parking lot for customers and employees; and that defendants were not employees or prospective customers but were on the parking lot for the sole purpose of distributing leaflets. We believe that this a sufficient showing of Sears's right to demand that the defendants leave the premises.

Defendants also argue that unlawful entry is the gist of the crime and that their entry upon the parking lot was lawful. They were not charged with, or convicted of, unlawfully entering upon the land of another but were charged with and found guilty of unlawfully remaining upon the land of another after they had been ordered to move. The statute declares such conduct to be a misdemeanor.

For the foregoing reasons the judgments of the municipal court of Chicago are affirmed.

Judgments affirmed.

UNITED STATES OF AMERICA

STATE OF ILLINOIS }
SUPREME COURT } ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the thirteenth day of March in the year of our Lord, one thousand nine hundred and sixty-one, within and for the State of Illinois.

Present: WALTER V. SCHAEFER, *Chief Justice*
JOSEPH E. DAILY, *Justice* GEORGE W. BRISTOW, *Justice*
HARRY B. HERSHEY, *Justice* RAY I. KLINGBIEL, *Justice*
BYRON O. HOUSE, *Justice* ROY J. SOLFISBURG, JR., *Justice*
WILLIAM G. CLARK, *Attorney General*
ROBERT G. MILEY, *Marshal*

Attest: MRS. EARLE BENJAMIN SEARCY, *Clerk*

BE IT REMEMBERED, that to-wit: on the 26th day of April 1961, the same being one of the days in vacation after the term of Court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

No. 35745

PEOPLE STATE OF ILLINOIS, *Appellee*

vs.

LEONARD D. GODUTO, also known as DAN GODUTO, *Appellant*

Appeal from Municipal Court City of Chicago 59 M 31504

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Municipal Court of the City of Chicago aforesaid, *Be Affirmed in all Things and Stand in Full Force and Effect*, notwithstanding the said matter and things therein assigned for error.

I Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this 16th day of May, 1961.

MRS. EARLE BENJAMIN SEARCY
Clerk,
Supreme Court of the State of Illinois.

(SEAL)

UNITED STATES OF AMERICA

STATE OF ILLINOIS }
SUPREME COURT } ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the thirteenth day of March in the year of our Lord, one thousand nine hundred and sixty-one, within and for the State of Illinois.

Present: WALTER V. SCHAEFER, *Chief Justice*
JOSEPH E. DAILY, *Justice* GEORGE W. BRISTOW, *Justice*
HARRY B. HERSHEY, *Justice* RAY I. KLINGBIEL, *Justice*
BYRON O. HOUSE, *Justice* ROY J. SOLFISBURG, JR., *Justice*
WILLIAM G. CLARK, *Attorney General*
ROBERT G. MILEY, *Marshal*

Attest: MRS. EARLE BENJAMIN SEARCY, *Clerk*

BE IT REMEMBERED, that to-wit: on the 26th day of April 1961, the same being one of the days in vacation after the term of Court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

No. 35746

PEOPLE STATE OF ILLINOIS, *Appellee*

vs.

NATHAN FRIEDMAN, *Appellant*

Appeal from Municipal Court City of Chicago 59 M 31505

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Municipal Court of the City of Chicago aforesaid, *Be Affirmed in all Things and Stand in Full Force and Effect*, notwithstanding the said matter and things therein assigned for error.

I Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this day of , 19 .

Clerk.

(SEAL) *Supreme Court of the State of Illinois.*